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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,532	03/04/2002	Carolyn J. Brown	P04978US1	6642

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SUITE 3200
DES MOINES, IA 50309-2721

EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,532

Applicant(s)

BROWN ET AL.

Examiner

Kathleen M Christman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 26-53 and 58-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 54-57 and 63-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04262002.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

In response to the election filed 01/16/2004, claims 1- 66 are pending.

Election/Restrictions

1. Applicant's election of species a in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 26-53 and 58-63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites the limitation "the curriculum". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 14, 18-20, 54, 55, 64 and 66 rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al (US 5727950). Cook et al teaches a method and system for instruction including: pre-designing a learning task and/or skill level for a student (col. 31: 52-58); pre-designing a set of support related to the learning task or skill level (col. 32: 39-44); presenting the learning task or skill level to a student (col. 24: 14-19); presenting to the student support from the pre-designed set of support (col. 13: 50-61); and adjusting the support presented to the student based on responses to the learning task or skill level from the student (col. 28: 40-59), as in independent claim 1 and similar limitations claims 54, 64, and 66. The instruction being performed through an electronic device (claim 2), specifically a computer (claim 5), which includes a visual display (claim 3) and a speaker (claim 4), is taught in col. 16: 31-50. The system components of claim 54 are taught throughout the section 5.1.2, starting at col. 15: 27, of the Cook et al reference. The student being an elementary school student (claim 6), which inherently includes kindergarten through second grade students (claim 7), is taught in col. 9: 1-4. The task or learning level being part of a curriculum (claims 14 and 55) is taught in col. 11: 55-67. The curriculum having one or more activities (claim 18) wherein the activities comprises one or more student tasks (claim 19), including answering questions (claim 20) are shown in at least Figures 3 and 4. Regarding claim 64, the aspects of basing a second learning activity off the responses to a first learning activity are described in the "remediation" abilities of Cook et al, see col. 28: 14-62.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 8-13, 15-17, 21-25, 56, 57, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al (US 5727950) in view of Wasowicz (US 6435877 B2). Cook et al teaches all aspects of the claimed invention as shown above but fails to specifically teach that the learning task or skill level is related to various parts of language acquisition, as in claims 8-13, 15-17, 56, 57 and 65 ; that the task is a matching task (claim 21), a recognition task (claim 22), or a sequential task (claim 23); that the learning task have varying difficulty levels (claim 24).

Wasowicz teaches a language education system which is performed on a computer. The system includes learning activities directed to both written and spoken language including auditory processing, phonological awareness, phonological processing and reading skills, see col. 2: 55-60. Multiple levels of difficulty are shown in col. 2: 63-67. The various types of exercises are shown in figures 4-6.

Cook et al does not teach that his invention is limited to any one specific type of learning material. As such one of ordinary skill in the art of education would be forced to seek alternative sources for educational content such as the Wasowicz system. Given this it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the language lessons of the Wasowicz invention into the agent based education system so as to provide the student with a language education curriculum.

Conclusion

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- a. Frasson (US 6341960 B1) teaches an online learning system with pre-designed help database
 - b. Stuppy (US 6146148) teaches a system where students are delivered pre-formatted educational materials, includes a pre-designed help database
 - c. Siefert (US 5810605, US 5904485, US 6334779 B1) teach a system which assess a user's learning style and presents a series of lessons to the student based upon this learning styles. Includes multi-tiered help and support functions, and detailed curriculum development information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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